

CHAPTER NO. 342

SENATE BILL NO. 799

By Cohen

Substituted for: House Bill No. 593

By Lois DeBerry, Bowers

AN ACT To amend Tennessee Code Annotated, Title 47, Chapter 18, relative to enact the "Video Consumer Privacy Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding Sections 2 through 6 of this act as a new part.

SECTION 2. This act shall be known and may be cited as the "Video Consumer Privacy Act".

SECTION 3. The legislature finds and declares that the viewing of rented video tapes and movies in the home is a popular and widespread leisure pastime. Innumerable retail establishments in this state commonly record, often by computer, data containing the identities of consumers who have rented video tapes and movies and the titles of the videos rented.

It is the intent of the legislature by enactment of this act to protect the personal privacy of individuals and their families who rent video cassette tapes and movies and similar audio visual materials, without unreasonably restricting the ability of video tape service providers to collect and use information as is necessary to conducting their business.

SECTION 4. As used in this act:

(1) "Consumer" means any renter, purchaser, or subscriber of goods or services from a video tape service provider or video tape seller.

(2) "Ordinary course of business" means only debt collection activities, order fulfillment, request processing, and the transfer of ownership.

(3) "Personally identifiable information" means any information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider or video tape seller.

(4) "Video tape service provider" means any person engaged in the business of rental of prerecorded video cassette tapes or similar audio visual materials.

(5) "Video tape seller" means any person engaged in the business of selling prerecorded video cassette tapes or similar audio visual materials.

(6) "Informed, written consent of the consumer" means that the video tape service provider, prior to furnishing any video tape services, shall offer the consumer an opportunity to elect not to have personally identifiable information disclosed. Such notice shall be in writing in at least ten point bold face type,

affixed to any membership, subscriber or rental agreement between the consumer and the video tape service provider, and shall be posted on a sign in full and clear view of the consumer at the point of rental transaction, and shall read as follows: "This video tape service provider from time to time provides to marketers of goods and services, the names and addresses of customers and a description or subject matter of materials rented by video customers. You have the right to elect not to have your name, address or the description or subject matter of any material rented included in such description or subject matter of any material rented included in such lists. This election may be changed by you, in writing, at any time."

SECTION 5. (a) A video tape seller or service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in Section 6 of this act.

(b) A video tape seller or service provider shall disclose personally identifiable information concerning any consumer:

(1) to a grand jury pursuant to a grand jury subpoena;

(2) pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, or in a criminal proceeding upon a showing of legitimate need for the information that cannot be accommodated by any other means, if:

(A) the consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order;

(B) the consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure; and

(C) the court imposes appropriate safeguards against unauthorized disclosure;

(3) to a law enforcement agency pursuant to a warrant lawfully obtained under the laws of this state or the United States; or

(4) to a court pursuant to a civil action commenced by the video tape seller or service provider or to enforce collection of fines for overdue or unreturned video tapes, and then only to the extent necessary to establish the fact of the rental. Notwithstanding the foregoing, a court shall impose appropriate safeguards against unauthorized disclosure.

In addition, if the consumer is a minor under the age of eighteen (18), a video tape seller or service provider shall disclose to the minor's parent or legal guardian personally identifiable information concerning the minor upon receiving a request from the parent or legal guardian for such information.

(c) A video tape service seller or provider may disclose personally identifiable information concerning any consumer:

(1) to the consumer;

(2) to any person with the informed, written consent of the consumer; or

(3) to any person if the disclosure is incident to the ordinary course of business of the video tape service provider or seller; and

(4) to any person if the disclosure is for the exclusive use of marketing goods and services directly to the consumer, and the video tape service seller or provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure.

(d) Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the state or any political subdivision thereof.

(e) A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected unless a request or order for access to such information under this act is pending.

SECTION 6. Any person found to be in violation of this act shall be liable to the aggrieved consumer for all actual damages sustained by such consumer as a result of the violation.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 27, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 14th day of June 1999


DON SUNDQUIST, GOVERNOR